



BRIEFING: NOVEMBER 18, 2014, BOARD MEETING AGENDA ITEM #6

TO: Chairman Richard and Board Members

FROM: Tom Fellenz, Chief Counsel

DATE: November 18, 2014

RE: Consider Non-Government Legal Services Contracting Plan and Approval of an Amendment to the Nossaman LLP Contract for Budget

Background

The California High-Speed Rail Authority (Authority) strives to best serve the public interest by delivering all aspects of the high-speed rail system on schedule, at the lowest possible cost, and with a quality that meets or exceeds acceptable industry and government standards. Legal services and support is a key component of ensuring the Authority meets those goals.

The Authority's legal service needs originally were met nearly entirely by the Attorney General's office. As the Authority's program expanded both in size and subject matter, so did its legal service needs. Accordingly, the Authority expanded from no in-house counsel to a present staff of five. The Authority has also seen increased need for services from the Attorney General's office, particularly in litigation, which the Attorney General's office has been meeting with minimal support from outside legal counsel. The Attorney General's office also has provided non-litigation advice in the areas of CEQA compliance, Open Meetings Act compliance and Prop 1A, among other areas.

In addition, the Authority has a legal services interagency agreement with the Department of General Services to provide assistance with goods and professional services procurements.

As the program moved from the environmental approval phase to the property acquisition phase the Authority entered into an interagency agreement with the State Department of Transportation (Caltrans) to provide real property legal services including litigation.

The Authority (and Attorney General's office) recognized that the Authority needed specialized legal services not available from the Attorney General's office. Broadly speaking, the specialized services involved assistance with the complex design-build construction procurement process. They also involved necessary environmental permitting from federal and state agencies (permits being prerequisites to construction); by way of analogy, the Department of Water Resources employs outside counsel for these permitting services for the Bay Delta Conservation Plan. Since 2009, the Nossaman LLP firm (Nossaman) has been engaged to assist the Authority with these matters. As the Authority's needs expanded into other technical areas, such as Surface Transportation Board (STB) advice and filings, Nossaman has been available and well-equipped to assist. The Authority has also

engaged other law firms to assist with legal matters in the environmental area to support the Attorney General's office or for trial purposes, among other needs.

Non-Government Legal Services Contracting Plan

Over the next several months, the Authority's Legal Division will be conducting a competitive process to obtain best value qualified legal services that cannot be met with current government legal services in the following practice areas:

- P3 Procurement and transaction planning.
- Construction Package (CP) contract and procurement legal advice for CP 4 onward, including track and systems, tunneling, et al.
- Environmental permitting legal support – i.e., state and federal environmental permits and mitigation planning related to northern California and other areas.

In addition, the Authority will seek to ensure competitive rates on existing non-governmental legal services contracts.

The Authority is currently discussing with Caltrans the possible expansion of State Attorney legal services opportunities to augment private legal services as a cost reduction measure.

Please note that state laws treat the procurement of legal services differently than procurement of most other services, and specifically exempt legal services from competitive bidding requirements. However, the Authority staff strives to obtain the best value out of legal services the Authority hires, balanced against the need to protect the Authority against business and legal risks. The Authority process for obtaining legal services is still competitive (e.g., interview of multiple attorneys/firms, comparison of rates, evaluation of experience and skills, etc.) but not in the formal sense.

Amendment to the Nossaman LLP Contract for Time and Money

As the Authority works to complete the legal services contracting plan described above, an amendment to the Nossaman contract budget is necessary to ensure certain legal work tasks are completed including: (1) CP 2-3 procurement; (2) procurement of trainsets; (3) the STB declaratory order process; and, (4) environmental permits for the Fresno to Bakersfield Project Section. Additionally, it is critical that legal services for the start of environmental permitting implementation in Southern California proceed uninterrupted.

Staff recommends that the Nossaman contract be amended to ensure program consistency, avoid an interruption of legal services, and retention of institutional knowledge, which are critical to project delivery. The firm will also be encouraged to engage in the competitive process for future work as it continues to provide legal services.

As part of the Nossaman contract amendment, the Authority will negotiate for competitive rates, will impose efficiencies, and will assure budget compliance. As previously reported to the Board, the current Nossaman legal services contract budget is \$17,000,000 (the original contract amount was \$1.2 million; the Board subsequently approved two amendments: \$4.7 million and \$8.6 million; the CEO approved one \$2.5 million amendment) and will expire on June 30, 2015.

Discussion

In order to ensure the Authority has time to conduct the competitive process described above for future legal work not covered by the Attorney General's office, the Nossaman contract must be amended to enable the legal services to proceed in an uninterrupted manner, and Authority Board action is necessary. Therefore, staff recommends that the Board authorize the Chief Executive Officer, or his qualified designee, to negotiate a contract amendment within the amount of \$2 million (bringing the total contract amount to \$19 million).

Nossaman is a well-respected law firm with over seventy years of experience delivering the highest quality legal expertise and policy advice for clients across California and the nation, particularly for large infrastructure projects. The firm provides practical, innovative and cost-effective advice relative to a variety of practice areas, including environmental permitting, design-build construction and project delivery.

Nossaman has a longstanding commitment to community involvement and pro bono work, diversity initiatives and environmentally-friendly practices in the legal profession and community. During its contract term, the firm also has continued to strive to meet the Authority's Board-adopted 30 percent Small and Disadvantaged Business (SBE) participation goal. The requested contract amendment will continue to include the 30 percent SBE participation goal adopted by the Authority Board of Directors.

Recommendation

It is the recommendation of Authority staff that the Board adopt a Resolution approving an amendment of the Nossaman contract in the amount of two million dollars (\$2,000,000.00). This will allow sufficient time for Authority staff to develop a non-government legal services contracting plan and conduct a competitive process to obtain best value for qualified legal services.

Attachments

– Resolution #HSRA 14-36